

**BATTLE CREEK CITY PLANNING COMMISSION
SPECIAL MEETING MINUTES
Wednesday, December 1, 2010**

1. Call to Order:

Chairman Preston Hicks, called the meeting to order at 4:00 p.m.

2. Attendance:

Members Present:

Steve Barker	John Godfrey	John Stetler
Susan Baldwin (Mayor)	Preston Hicks	
Jan Frantz	William Morris	

Members Excused: Chip Spranger

Staff Present: Christine Hilton, Planning Supervisor
Susan Bedsole, Director Community Services
Eileen Wicklund, City Attorney
Jill Steele, Deputy City Attorney
Glenn Perian, Senior Planner
Leona Parrish, Administrative Assistant

3. Additions or Deletions to the Agenda: None

4. Correspondence: Phone message to Susan Bedsole from an unknown caller requesting to leave the doors open to dispensaries in order to get medication.

5. Public Hearing & Deliberations/Recommendations:

A. Zoning Amendments (#A-04-10): Petition from Planning Department staff requesting an amendment to the Zoning Ordinance Chapters 1258.04(1); 1260.03(n); and 1264.03(h) to address "Medical Marijuana" related uses.

- 1. Public Hearing:** Chairman Hicks declared the public hearing for #A-04-10 open. Ms. Christine Hilton, Planning Supervisor, provided an update regarding the three chapters in the zoning ordinance requesting to be amended: Chapters 1258.04(1), 1260.03(n), and 1264.03(h). Noted that in the "O1 Office District" is to include Compassion Clubs that cannot be any closer than the distance of 1,000 ft. from a school or childcare facility; the "C-1 Neighborhood Commercial District" may be the primary caregiver and "C3- Intensive Business District" primary caregiver.

There were 35 persons that came forward to speak and voiced some of their concerns which are as follows:

- Compassion Clubs help care for sick and dying and is a social and safety net for persons to care for those who cannot care for themselves
- People of Battle Creek have the right to pass law in accordance to State Law
- Patients having a right to purchase in a storefront instead of a back alley on the streets
- Regarding square footage allowed for growing; giving access to compassion clubs allowed to dispense

- Concerns of not finding a caregiver and/or caregiver not available when needed
- Need free enterprise “quoted definition” want compassion clubs for safe environment
- Has concerns regarding the “HIPAA Law” and confidentiality
- Wants a business opportunity and the ordinance would make them note address where business is located and the would become unsafe
- Want an equitable and ethical solution
- States it is a plant and people should not be afraid
- Cannot grow their own plants as they are very sick and also do not want in their homes
- Helps better than other drugs and is less costly
- Setup the same as regulating a pharmacy
- With the limitations the city wants; it has been 3 months and he cannot find a caregiver
- Growing in homes would be unsafe and need security and space would not be large enough
- Asking Battle Creek to set an example for other cities and allow
- Pharmaceutical medicines cause many different side effects and does not completely help; marijuana helps control the pain without side effects
- States alcohol is sold in stores and need to get beyond the idea marijuana is a street drug
- Physicians have suggested the use of marijuana as nothing else helps with the pain
- Compassion Clubs are a good thing for surrounding area and is needed; need to work together if they care about the community
- Do not need to take hard narcotics for pain as marijuana works better
- By allowing Compassion Clubs to distribute it would stop illegal persons from selling

2. Deliberation and Recommendation

Commissioner Hicks asked if there was anyone else wishing to speak either for or against this petition, seeing none the public hearing was closed.

A MOTION WAS MADE BY COMMISSIONER BARKER, SUPPORTED BY COMMISSIONER STETLER TO APPROVE THE AMENDMENTS TO THE ZONING ORDINANCE FOR CHAPTERS 1258.04(I), 1260.03(N), AND 1264.03(h) TO ADDRESS MEDICAL MARIJUANA RELATED USES OUTLINED IN THE STAFF REPORT.

Commissioner Preston Hicks asked City staff to clarify the ordinance and what is being submitted.

Ms. Susan Bedsole stated that the zoning is what is being addressed tonight and wanted to note that in is not stated in this ordinance amendment that patients need to register. It is two or more primary caregivers that are allowed to cultivate, process, and/or distribute; and changed to allow use of consumption in Compassion Clubs that is in an entirely enclosed structure.

Ms. Eileen Wicklund stated dispensaries are not allowed by State Law. Marijuana under Federal Law and State Law only makes it illegal and is only legal to patients and caregivers only and that Co-ops and dispensaries are not addressed by the State of Michigan. Explained the grandfather term as one that is used to relate to something that was legal in the beginning, and that dispensaries or compassion clubs have never been legal; therefore cannot become legal non-conforming.

Discussion:

Commissioner Barker asked the definition of an enclosed locked facility and that the State does not add; "fully" enclosed locked facility so why are we adding. Ms. Eileen Wicklund stated she does not take it as being different.

Commissioner Barker asked if it can be inside an accessory building. Ms. Susan Bedsole stated that accessory buildings are typically less secure, can be broken into other than in a residential structure.

Commissioner Barker asked who prevails between State Statute and Local. Ms. Wicklund stated technical legal analysis the city ordinance regulate local and do not want to conflict with the State Statute.

Commissioner Barker asked if a single caregiver can have 12 plants and also be a qualifying patient and have 2.5 oz on their possession and need to be licensed by the State. Ms. Wicklund said if it is within a household of persons only, they would not need a license. Ms. Bedsole stated the answer is yes, the act allows each person to have 2.5 oz on them.

Commissioner Barker asked if the distance was from property line to property line. Ms. Bedsole stated the 1,000 feet distance is a radius from property line to property line.

Commissioner Barker asked if the licensing is a violation of the HIPAA Law. Ms. Wicklund stated it would not be violated as they are only asking for their registration number only. The caregiver would provide their address which would not be in violation; as we would be getting the information from the person who provided to the city in order to get their license, and not giving out that information.

Commissioner Barker asked if their findings would be incorporated into the ordinance. Ms. Wicklund stated yes, and also be made part of the record; asked persons to give information after the meeting tonight to share the findings.

Commissioner Godfrey asked how 9 sq. ft. was determined as it seems too large and might need to be modified. Ms. Susan Bedsole stated the City Police Department provided information based on their knowledge of plants found growing illegally. Stated other states also use the 3 ft. x 3 ft. size. Ms. Eileen Wicklund added that based on research done this size is what was found.

Commissioner Godfrey asked Compassion Clubs if they buy the extra marijuana. Anonymous person stated they provide money donations for exchange, they do not grow or process and have members that grow more and obtain from them and have their credentials checked.

Commissioner Frantz said that the majority of Battle Creek votes have voted yes for the State Law and want a place outside of their home to consume. Said she heard today a number of 70,000 applicants want the product and could Google this information (per citizen quote). Stated the unlimited number of caregivers at a site could open up unanticipated consequences due to the scale and scope of a potential operation.

Ms. Susan Bedsole stated the size of the building will limit the number of plants.

Commissioner Godfrey stated he heard testimony of the strength of Compassion Clubs and now hear the importance of distribution center need and person not being able to grow or find a caregiver.

Maybe we should look at legal distribution. Said he would like to see a means of having a Compassion Club for licensed patients that do not grow/citify/processing.

Commissioner Stetler asked for a grace period for the existing Compassion Clubs and if the State Law allowed. Ms. Susan Bedsole said if the State Statute is being followed they would not need a grace period.

Commissioner Barker said he echo's Commissioner Godfrey and that missing in the State Statute and ordinance is distribution and is troubling and inconsistent. Said we need to look at regulation issues and hope we can be creative to create for those in need as it is limited. Ms. Wicklund said what do you plan to change.

Ms. Christine Hilton explained the zoning changes that are being addressed were limits to "O-1 Office District" and read ordinance and that what is being addressed is to the location only. Ms. Hilton read the three amendments that were being asked to be addressed today.

Commissioner Barker asked if the amendment passed would it close the Compassion Clubs that are now intact. Ms. Hilton stated the Planning Commission make recommendations to the City Commission and would not close the Compassion Clubs. Ms. Wicklund stated the licensing ordinance addresses those issues and the changes to the ordinance tonight they are legally allowed.

Commissioner Godfrey asked if the motion is addressing zoning ordinance only and caregiver locations. Stated he implores the citizens attending today to attend the City Commission meeting and ask the Mayor and City commissioners to find a way to help the citizens and that if we need to do a statute different from the State; then do so.

Commissioner Frantz stated she is not in support of multiple caregivers in any district; asked to exclude amendment 1264.03(h).

AMENDED MOTION WAS MADE BY COMMISSIONER FRANTZ, SUPPORTED BY COMMISSIONER GODFREY TO EXCLUDE CHAPTER 1264.03(h) AND APPROVE THE AMENDMENTS TO THE ZONING ORDINANCE FOR CHAPTERS 1258.04(I), 1260.03(N), AND TO ADDRESS MEDICAL MARIJUANA RELATED USES OUTLINED IN THE STAFF REPORT.

Discussion

Commissioner Frantz stated if approved there would be no limit, for instance the old Felpaush cold be available and is very large. Stated she is concerned for the square footage that would be allowed.

Commissioner Godfrey stated a caregiver can have five patients; asked if a number can be listed for caregivers per number of patients. Ms. Bedsole stated a caregiver is limited per each patient; Commissioner Frantz concern is number of caregivers for any given area or building and may be in a very large building or parcel.

Commissioner Godfrey asked if Inspections would monitor number of square feet for each caregiver allowed for whatever property.

Commissioner Morris asked if the council provide an opinion and possibly do research. Ms. Wicklund stated it is more of a policy decision.

Commissioner Stetler stated it might be better to split off or have in a central area.

Commissioner Frantz stated if it was allowed in an Industrial Park it would be difficult to get business to locate in that area. Ms. Hilton noted with the zoning layers it would be allowed in an Heavy Industrial zone.

Commissioner Frantz asked if they could limit the area that it is allowed. Ms. Wicklund stated they could possibly use the drug free school zones as it is already Federal Law; would need some studies to determine if this would work.

Commissioner Barker stated he agrees with Commissioner Stetler for the need to regulate the area but when near Industrial Park area it should be excluded.

Ms. Christine Hilton stated there is a large area within Battle Creek that is zoned "I-2 Heavy Industrial" and if omitting this zone it would eliminate a lot of properties; stated they could omit for the Industrial Park area only.

A ROLL CALL VOTE WAS TAKEN FOR THE AMENDED MOTION: THREE IN FAVOR (FRANTZ, GODFREY, AND MORRIS; FOUR OPPOSED (BARKER, BALDWIN, HICKS, AND STETLER; MOTION FAILED.

A ROLL CALL VOTE WAS TAKEN FOR THE MOTION: FIVE IN FAVOR (BARKER, BALDWIN, GODFREY, HICKS AND STETLER; TWO OPPOSED (FRANTZ AND MORRIS; MOTION APPROVED.

9. Comments by the Public:

Eleven citizens came forward to speak stating the following:

- Quoted the law and want Planning Commission to make an amendment to allow Compassion Clubs and Distribution Centers and that he will not stop until he gets them.
- Citizen provided his email address to have persons contact him regarding a Compassion Club for help.
- Stated what he heard tonight sounds political as they are politicians and will create ways that they will go ahead and grow with no limit and no restrictions.
- Asked what the Planning Commission will do to provide as an alternative means to provide to the citizens.
- Quoted the Enquirer and News that in Colorado they are trying to regulate the quality of the product and that it is a reality and will not be repealed and that the city needs to face reality.
- Stated the city needs to read the MMA as they are confused.
- Stated she is 41 years old and that when she was young she learned it was an evil drug, but found it is not and does not understand why they cannot have a Compassion Club to distribute.

- Stated he appreciated the time and effort and that they are just trying to help persons and asked that the city take the time to learn about Compassion Clubs.
- Stated he feels the City Attorney took a narrow view of this subject and that the intent of the people is to get meds transferred safely and that he appreciates Commissioner Godfrey.

10. Comments by the Staff and Commission Members:

Commissioner Barker congratulated Commissioner Hicks on running an informative meeting as it was ran well.


Commissioner Hicks thanked the city staff for the information that was provided as it was done well.

Ms. Christine Hilton noted that there will be holding a regular meeting on December 15, 2010.

11. Adjournment:

The meeting adjourned at 6:47 P.M.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Christine M. Hilton".

Christine M. Hilton, AICP
Executive Secretary
Planning Commission